

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Proposing rule making related to agency address and waivers and providing an opportunity for public comment

The Educational Examiners Board hereby proposes to amend Chapter 1, “General,” Chapter 2, “Petitions for Rule Making,” Chapter 3, “Declaratory Orders,” Chapter 4, “Agency Procedure for Rule Making,” Chapter 5, “Public Records and Fair Information Practices,” Chapter 6, “Waivers or Variances from Administrative Rules,” and Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 272.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 272.2 and 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update the Board’s address in various chapters and update language regarding waivers pursuant to 2020 Iowa Acts, House File 2389.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on October 30, 2020. Comments should be directed to:

Kimberly Cunningham
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50319-0147
Fax: 515.281.7669
Email: kim.cunningham@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 28, 2020
1 p.m.

Board Room
701 East Court Avenue, Suite A
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 282—1.2(272,17A) as follows:

282—1.2(272,17A) Organization and method of operation.

1.2(1) to 1.2(4) No change.

1.2(5) Conduct of business. The ordinary business of the board is conducted at its regular meetings generally held at ~~the Grimes State Office Building,~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309.

a. to i. No change.

j. Information, submissions or requests. General inquiries regarding the board, requests for forms and other documents and all other requests and submissions may be addressed to the Executive Director, Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309.

This rule is intended to implement Iowa Code chapter 272.

ITEM 2. Amend **282—Chapter 2** as follows:

CHAPTER 2

PETITIONS FOR RULE MAKING

[Prior to 5/16/90, see Professional Teaching Practices Commission[287] Ch 1]

The board of educational examiners hereby adopts the petitions for rule making segments of the Uniform Administrative Rules which are ~~printed in the first volume of the Iowa Administrative Code~~ published at www.legis.iowa.gov/docs/publications/ACOD/767403.pdf on the General Assembly's website, with the following amendments:

282—2.1(17A) Petition for rule making. In lieu of the words “(designate office)”, insert “The Board of Educational Examiners, ~~Grimes State Office Building, third floor~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309”. In lieu of the words “(AGENCY NAME)”, the heading on the petition form should read:

“BOARD OF EDUCATIONAL EXAMINERS”

282—2.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Executive Director of the Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309.

These rules are intended to implement Iowa Code section 17A.7.

ITEM 3. Amend **282—Chapter 3**, preamble, as follows:

The board of educational examiners hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure ~~printed in the first volume of the Iowa Administrative Code~~ published at www.legis.iowa.gov/docs/publications/ACOD/767403.pdf on the General Assembly's website, with the following amendments:

ITEM 4. Amend rule 282—3.1(17A) as follows:

282—3.1(17A) Petition for declaratory order. Throughout the rule, in lieu of the words “(designate agency)”, insert “the Board of Educational Examiners, ~~Grimes State Office Building~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309”. In lieu of the words “(AGENCY NAME)”, in the heading on the petition insert “BEFORE THE BOARD OF EDUCATIONAL EXAMINERS”.

ITEM 5. Amend rule 282—3.5(17A) as follows:

282—3.5(17A) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “Executive Director, Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Des Moines, Iowa 50319”.

ITEM 6. Amend **282—Chapter 4**, preamble, as follows:

The board of educational examiners hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure ~~printed in the first volume of the Iowa Administrative Code~~ published at www.legis.iowa.gov/docs/publications/ACOD/767403.pdf on the General Assembly's website, with the following amendments:

ITEM 7. Amend rule 282—4.5(17A) as follows:

282—4.5(17A) Public participation.

4.5(1) Written comments. In lieu of the words “(identify office and address)”, insert “Executive Director, Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309”.

4.5(5) Accessibility. In lieu of the words “(designate office and phone number)”, insert “the executive director at (515)281-5849”.

ITEM 8. Amend rule 282—4.6(17A) as follows:

282—4.6(17A) Regulatory analysis.

4.6(2) Mailing list. In lieu of the words “(designate office)”, insert “Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309”.

ITEM 9. Amend rule 282—4.11(17A) as follows:

282—4.11(17A) Concise statement of reasons.

4.11(1) General. In lieu of the words “(specify the office and address)”, insert “Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309”.

ITEM 10. Amend **282—Chapter 5**, preamble, as follows:

The board of educational examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are ~~printed in the first volume of the Iowa Administrative Code~~ published at www.legis.iowa.gov/docs/publications/ACOD/767403.pdf on the General Assembly's website.

ITEM 11. Amend subrule 5.3(1) as follows:

5.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “office where the record is kept”. In lieu of the words “(insert agency name and address)”, insert “Board of Educational

Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309".

ITEM 12. Amend ~~282—Chapter 6~~, title, as follows:

~~WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES~~

ITEM 13. Amend rule 282—6.1(17A) as follows:

282—6.1(17A) Definition. For purposes of this chapter, a “waiver ~~or variance~~” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 14. Amend rule 282—6.4(17A) as follows:

282—6.4(17A) Criteria for waiver ~~or variance~~. In response to a petition completed pursuant to rule ~~282—6.6(17A)~~, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

ITEM 15. Amend rule 282—6.12(17A) as follows:

282—6.12(17A) Summary reports. Submission of waiver information. ~~Semiannually, the board shall prepare a summary report identifying~~ The board shall submit information about granted and denied waivers to the Internet site pursuant to Iowa Code section 17A.9A within 60 days. The Internet site shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board’s actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ITEM 16. Amend rule 282—11.4(17A,272) as follows:

282—11.4(17A,272) Complaint.

11.4(1) and 11.4(2) No change.

11.4(3) Required copies—*place and time of filing the complaint.*

- a. A copy of the complaint must be filed with the board.
- b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the ~~Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309.
- c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay. The conduct upon which it is based must have occurred or been discovered by the complainant within three years of filing of the complaint unless good cause is shown for an extension of this limitation.

11.4(4) to 11.4(9) No change.

ITEM 17. Amend subrule 11.14(3) as follows:

11.14(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the Board of Educational Examiners, ~~Grimes State Office Building, Des Moines, Iowa 50319-0147~~ 701 East Court Avenue, Suite A, Des Moines, Iowa 50309. All documents that are required to be served upon a party shall be filed simultaneously with the board.